

Appl. No. 10/613,861
Reply to Office Action of 03/01/2006

REMARKS:

The status of the application according to the pending Office Action is as follows:

Claims 1-9, 15-35, and 41-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hansa *et al.* (U.S. Patent No. 6,472,004) in view of the admitted state of the prior art, and Aterno *et al.* (U.S. Patent No. 2,811,483); and

Claims 10-14, 36-40, and 50-54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of JP55045601 and Anderson (U.S. Patent No. 2,410,417).

In view of the following remarks, Applicant respectfully requests reconsideration and withdrawal of all grounds of rejection, and the passage of the above-identified claims to allowance.

1. Claims 1-9, 15-35, and 41-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hansa *et al.* (U.S. Patent No. 6,472,004) in view of the admitted state of the prior art, and Aterno *et al.* (U.S. Patent No. 2,811,483).

Hansa *et al.* disclose an uncooked oat product coated with a nutrient coating, which can be vitamin C. Hansa *et al.* do not disclose an oat product that contains separate components of oat and vitamin C.

Aterno *et al.* disclose a pharmaceutical preparation of beadlets containing vitamins and/or minerals. Aterno *et al.* disclose that the beadlets prepared thereof can be sprinkled on breakfast cereals, cakes, confections and, in general, on any food product, which is suitable for administration to children (see Aterno *et al.*, column 1, lines 46-52). However, this is not a disclosure of a food product containing separate components of food and vitamin, nor does this teach or suggest that the beadlets containing vitamins can be stored together with other food products. Particularly, Aterno *et al.* specify that the beadlets cannot be administered with a food product which is served in a heated condition. Therefore, Aterno *et al.* teach away from administering the beadlets containing vitamins together with oatmeal. Upon recognizing that

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oatmeal is served in a heated condition, one skilled in the art would not be motivated to apply the teachings of Aterno *et al.* to achieve an oatmeal product with an added vitamin component as is currently claimed.

Also, the Examiner noted that "Aterno *et al.* disclose that it is known to coat vitamins and minerals with gums and oil, and to up to 10-50 layers of coatings" (see Office Action, page 2, lines 17-20). The process of coating with syrup followed by coating with vitamins and minerals is repeated for achieving a sufficient quantity of these materials to provide the desired levels thereof per unit volume of beadlets (see Aterno *et al.*, column 2, lines 51-59). Coating of vitamins and minerals is not a disclosure of encapsulation that provides stability of Aterno *et al.* In fact, Aterno *et al.* disclose a coating of a plastic or resinous material to seal and protect the vitamins from the influence of air and moisture (see Aterno *et al.*, column 2, lines 64-68 and column 11, lines 44-46). In contrast, the current claims do not involve a coating of a plasticizable matrix, but instead employ triple encapsulation having layers of oil/fat and a polymer constituents, which does not impart undesirable sensory and flavor attributes that are typically associated with a plasticizable matrix (see page 7, paragraph [0025], lines 21-24, and page 2, paragraph [0006], lines 22-26).

Triple encapsulation is typically used for keeping vitamin C stable to high heat reactions during baking. It has not been previously recognized that triple encapsulation is necessary for enhancing the stability of vitamin C when added to a dry product and stored under ambient conditions. Triple encapsulated vitamin C has not been applied to an oatmeal product prior to the claimed invention. The disclosure of Hansa *et al.* and Aterno *et al.* is consistent with Applicant's remarks. Neither Hansa *et al.* nor Aterno *et al.* recognize, teach, or suggest a need to improve the stability of vitamin C preparations when used in an oatmeal product. "There can of course arise situations wherein identification of the problem is itself the invention." See *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 381 F.3d 1371 (Fed. Cir. 2004). Further, "Prior knowledge in the field of the invention must be supported by tangible teachings of reference materials, and the suggestion to combine references must not be derived by hindsight from knowledge of the invention itself. See *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1578-79 (Fed. Cir. 1997). "When prior art references require selective combination by the court to render

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obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself." See *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir. 1985).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or reference when combined) must teach or suggest all the claim limitations.

In view of the foregoing, Applicant respectfully submits that at least the above-identified first and second criteria for establishing a prima facie case of obviousness have not been established. Accordingly, for at least these reasons, Applicant respectfully submits that claims 1-9, 15-35, and 41-44 are allowable over Hansa *et al.* in view of the admitted art, and Aterno *et al.*

Because claims 10-14, 36-40, and 50-54 depend, either directly or indirectly, from either claim 1, 15, or 41, and "[d]ependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious." *In re Fine*, 5 USPQ2d, 1586-1600 (Fed. Cir. 1988), applicant respectfully submits that these claims are allowable as well.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration, withdrawal of all grounds of rejection, and allowance of all of the claims now present in the application in due course.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the

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Examiner feel that a personal discussion might be helpful in advancing this case to allowance,
the Examiner is invited to telephone the undersigned.

The Commissioner is authorized to charge any required fees, including any extension
and/or excess claim fees, any additional fees, or credit any overpayment to Goodwin Procter LLP
Deposit Account No. 06-0923.

Respectfully submitted for Applicant,



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